

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

HORTON INDUSTRIES, INC.<sup>1</sup>

Employer

and

Case 10-RC-15395

UNITED STEELWORKERS OF AMERICA  
AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION

Horton Industries, Inc., is a Georgia corporation with its manufacturing offices located in Eatonton, Georgia. The Petitioner, United Steelworkers of America, AFL-CIO, AFL, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all production and maintenance employees at the Employer's Horton Homes facilities in Eatonton, Georgia.<sup>2</sup> The Employer and Petitioner agree that the bargaining unit should exclude office clerical employees, professional employees,

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<sup>1</sup> The name of the Employer appears as amended at the hearing. Horton Industries, Inc. is apparently a holding company that owns and operates three separate subsidiaries: 1) Horton Homes, Inc.; 2) Horton Ironworks, LLC; and 3) Horton Vans, Inc. As discussed herein, the Petitioner seeks to represent only those employees employed at Horton Homes, Inc.

<sup>2</sup> Although the petitioned-for unit was not formally amended at hearing, the record makes clear that the parties are in agreement on the inclusion of approximately 15 plant clerical employees in any unit found appropriate.

guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing and both of the parties made oral argument and filed briefs, which have been duly considered.

There is one issue presented: (1) whether the scope of the petitioned-for unit should be expanded to include the production and maintenance employees at Horton Iron Works, LLC and Horton Vans, Inc. The Employer argues that the employees at all three subsidiaries should be included in any unit found appropriate. The unit sought by the Petitioner consists of approximately 472 employees, while the expanded unit urged by the Employer would consist of approximately 618 employees.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that the functional integration of the Employer's various operations is so substantial as to negate the separate identity of the petitioned-for unit consisting of only Horton Homes, Inc. employees. I shall therefore direct an election in the multi-facility unit urged by the Employer.<sup>3</sup>

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. I will then present in detail the facts and reasoning that supports my conclusion on this issue.

## **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

As noted, Horton Industries, Inc. operates three wholly owned subsidiaries. N.D. Horton, Jr. has financial control of Horton Industries and its subsidiaries and serves as the chief executive officer. Horton Homes, Inc., the petitioned-for subsidiary, operates from two facilities which are

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<sup>3</sup> Horton Industries, Inc. and its three subsidiaries constitute a single employer. The record reflects that all entities share common ownership and management, centralized control of labor relations, and an interrelation of operations that demonstrates that "for all purposes, there is in fact only a single employer." NLRB v. Browning-Ferris Industries, 691 F.2d 117, 1122 (3d. Cir. 1982). However, a determination of single-employer status does not determine the appropriate bargaining unit. Consideration of the proper scope of the unit examines traditional employee community of interest. Peter Kiewit Sons' Co., 231 NLRB 76 (1977); Edenwal Construction Co., 294 NLRB 297 (1989).

separated by two-tenths to three-tenths of a mile. Approximately 472 non-supervisory employees work at the two Horton Homes facilities. Horton Homes manufactures modular housing (mobile homes) and commercial type buildings. The production process uses production lines at plants A and B, which include various departments such as floor, electrical, interior, interior walls, tops, molding, and final finish.

Horton Iron Works operates out of two buildings, which are located just across the street from the two Horton Homes facilities. The distance between the facilities is about two-tenths of a mile. The Iron Works was purchased by Horton Homes in 1995. Approximately 60 non-supervisory employees work at Iron Works. These employees fabricate frames and refurbish axels and tires for use at both Horton Homes and Horton Vans. The Iron Works is organized into three divisions. The fabricating division, which opened in 1997, builds the chassis for both the modular homes manufactured at Horton Homes and the trailers manufactured at Horton Vans. The frame division maintains inventories of raw materials and parts for the chassis. The tire and axle division, which began operating in 1996, refurbishes axles and tires, which are subsequently sold to the frame division. When the tire and axle division commenced operations, employees were transferred from Horton Homes to fill those jobs.

Horton Vans, Inc., operates from a single facility, which is located three-tenths of a mile from Horton Homes. The 85 non-supervisory employees at Horton Vans produce cargo trailers (Horton Haulers) and horse trailers. The trailer manufacturing operations began at Horton Iron Works in 1998. The trailers were initially assembled on a separate production line at the Horton Homes facility, until it moved to its present location in October 2001. The initial employee complement for the trailer production as well as those who subsequently moved to the new facility in October 2001 were previously employed as full-time employees of Horton Homes.

## **II. THE SCOPE OF THE UNIT:**

As is noted above, the Petitioner seeks an election among production and maintenance employees employed by the Horton Homes, Inc. subsidiary. The Employer, contrary to the Petitioner, contends that an employer-wide unit of all production and maintenance employees working on the campus of Horton Industries in five separate facilities is the sole appropriate unit in which any petitioned-for election should be conducted. At the outset, it should be noted that there is nothing in the statute that requires that the unit for bargaining sought by the Petitioner be the only appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be an appropriate one. Taylor Bros., Inc., 230 NLRB 861, 869 (1977). Thus, the question to be decided herein is whether the unit sought by the Petitioner, consisting of two out of five facilities, is *an* appropriate unit under the Act.

The determination of the proper scope of a bargaining unit when, as here, the Employer operates more than one plant often presents special problems. While the scope of the unit sought by the Petitioner is relevant, it is not determinative. When a union seeks a presumptively appropriate unit – either a single facility or an employer-wide unit, it is the employer’s burden to rebut the presumption. As the union seeks to represent the employees at the two facilities of the Horton Homes subsidiary, the single-plant presumption of appropriateness is not applicable herein. On the other hand, an employer-wide unit consisting of all five facilities, as urged by the Employer, is presumptively appropriate. The factors to be considered in reaching a unit determination include past bargaining history<sup>4</sup>; the extent of contact and interchange among employees; the extent of functional integration of operations; the differences, if any, in the equipment or in the skills or types of work required; the centralization or lack thereof of

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<sup>4</sup> There is no collective bargaining history at either the Horton Homes unit or in the broader unit urged by the Employer.

management and supervision, particularly in regard to labor relations; and the physical and geographical location in relation to other facilities. Waste Management of Washington, Inc., 331 NLRB 309 (2000); New Britain Transportation Co., 330 NLRB 397 (1999); Novato Disposal Services, 328 NLRB 820 (1999); Courier Dispatch Group. Inc., 311 NLRB 728 (1993); Esco Corp., 298 NLRB 837 (1990); Dayton Transport Corp., 270 NLRB 1114 (1984).

Interchange and Contact Among Employees:

The employee interchange in the instant case involves both the day-to-day interchange of certain maintenance employees as well as a substantial number of involuntary, permanent transfers of employees from facility to facility as business conditions warrant. The maintenance department, supervised by Billy Poole, is responsible for the buildings and equipment at all five manufacturing facilities. Poole supervises 11 employees, who work not only at the Horton Homes facility, but also spend a significant portion of their time at the Horton Vans and Horton Iron Works facilities. At all facilities, maintenance employees perform both day-to-day maintenance on computers, fences and welding equipment, and routine repairs and painting. Their duties also include maintenance projects. For example, maintenance employees recently completed the construction of paint booths at both Horton Iron Works and Horton Vans. The number of maintenance employees working at the Iron Works and Horton Vans facilities varies. Usually, the maintenance employees work in pairs, but sometimes a full crew is required to work on larger projects. The duration of the maintenance jobs at the Horton Vans and Horton Iron Works facilities also varies. Maintenance employees work at the Iron Works facility daily. At Horton Vans, maintenance employees are on site from 3 to 4 days each week. Occasionally, maintenance crews from Horton Homes have worked up to five days a week at both Horton Vans and Horton Iron Works.

While working at Horton Vans and the Iron Works, maintenance employees have repeated contact and interact with the employees at those facilities. When necessary, the production employees at these facilities will assist the maintenance employees. In addition, while working at those facilities, the maintenance employees take lunch and other breaks with the production employees.<sup>5</sup>

All non-supervisory employees are subject to permanent transfers to other facilities on the Horton Industries campus depending upon business conditions. To avoid employee lay offs whenever orders are low at one facility, the excess employees are permanently transferred to another facility to fulfill production needs. This interchange process is facilitated by the similar job skills and experience necessary to perform the production jobs at each of the facilities. As discussed below, the training period for a new job is brief - usually only one day. All transfers are involuntary and for an indefinite period of time.<sup>6</sup> During the past four years, 191 production employees have been involuntarily and permanently transferred among the facilities of Horton Homes, Horton Iron Works and Horton Vans. This continuing interchange of employees is significant not only in quantity, but also is significant in terms of the percentage of employees transferred in and out of the facilities. Over the past four years, the transfers between Horton Homes and Horton Vans involved a significant percentage of the 82 employees currently working at Horton Vans. As demonstrated by the record evidence, the percentage of employee transfers, either in or out of various subsidiaries ranged from 22 percent to 48 percent of the workforce of the subsidiary.

These involuntary and permanent transfer of employees between facilities are likely to continue given the vicissitudes of the business cycle. Moreover, the transfers afford the

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<sup>5</sup> The record is clear that there is rarely, if ever, daily contact among the various production employees at the five different facilities.

<sup>6</sup> While employee requests for transfers are considered, such voluntary transfers occur infrequently.

Employer an efficient way to manage and operate facilities where additional employees are needed.

Functional Integration of Operations:

There is substantial plant integration. After the production workers at Horton Iron Works complete work on the chassis, Horton Iron Works employees transport the chassis across the street to Horton Homes, where the production workers at those facilities begin the assembly process of mobile homes. If the chassis is intended for Horton Vans, the Putnam Group employees<sup>7</sup> transport the chassis to Horton Vans for assembly. Work opportunities for the employees at the Iron Works are dependent upon the manufacturing orders emanating from Horton Homes and Horton Vans.

In addition to process integration, the functional integration between facilities is also demonstrated by the centralized services, which support production at each of the five facilities.

As previously noted, the maintenance at all five facilities is performed by the 11 maintenance employees working out of the central maintenance department located at Horton Homes. In addition to a centralized maintenance function, the purchasing for all five facilities is vested in Steve Gregory of Horton Industries. Gregory negotiates and contracts with various vendors for the materials necessary to manufacture the products at each of the facilities. Purchasing conducts the negotiations with vendors, and finalizes a supply contract and price. As the supplies and raw materials are received, employees at Horton Homes, Horton Iron Works, and Horton Vans maintain the purchase orders and inventory.

The engineering functions for products manufactured at the Iron Works, Horton Homes, and Horton Vans are handled through Carl Burrup, an engineer with Horton Industries. All

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<sup>7</sup> The Putnam Group is a company owned by the Horton family that handles all shipping for Horton Industries. Although not clear in the record, it appears that neither party is contending that Putnam employees should be included in the unit found appropriate herein.

shipping of finished products manufactured by both Horton Homes and Horton Vans is centralized through The Putnam Group. The Putnam Group also assists with transporting fabricated parts from the Iron Works to the Horton Vans facility. A central mailroom is located at Horton Homes from which the mail is distributed to the other facilities. Finally, the Employer has implemented a uniform safety program, which is centrally administered for each of the five facilities. Monthly safety meetings are held at Horton Homes with supervisors from all three subsidiaries participating.

Similarity of Job Skills and Functions:

There is substantial similarity of job skills and job functions within all facilities, which gives the Employer the flexibility to transfer employees among the facilities whenever business conditions require. The production processes and jobs at all facilities are similar. The production workers at Horton Homes and Horton Vans work on departmentalized assembly lines, and therefore employ comparable skills in their respective manufacturing process. Moreover, the jobs at Horton Vans and Horton Iron Works involve both welding and metal fabrication. The similarity of skills and job functions at the facilities simplifies the training of employees as they are transferred from facility to facility. In most cases, transferred employees are “up-to-speed” on their new jobs by the very next day. No special training is required after employees are transferred from facility to facility.

Centralized Control of Management and Labor Relations:

As the parent company of Horton Homes, Inc., and Horton Vans, Inc., Horton Industries “owns” both of those subsidiaries. In turn, Horton Iron Works, LLC is owned and operated by Horton Homes Inc. As previously noted, the five facilities located on the Eatonton, Georgia campus are the only manufacturing facilities of Horton Industries, Inc. It is clear from the record



that the Employer's President and owner, N.D. Horton, Jr., is a "hands-on" executive who runs a highly centralized operation, and manages Horton Homes, Horton Vans, and Horton Iron Works through Horton Industries. Horton signs all the employee, supervisor, and manager paychecks; decides the minimum hourly pay at all facilities; and is involved in operational matters, except for the human resource function. The vice-president of human resources for Horton Industries, Rudy Hicks, is responsible for all human resource functions at all facilities. The human resources offices are located in one of the Horton Homes facilities. The personnel files for all employees are maintained in the Horton Homes central office and the payroll and workers' compensation functions are administered through the human resources department. Employees at each of the facilities must go to the human resource office for assistance with all HR functions. The plant managers for Horton Homes, Horton Iron Works and Horton Vans report to Hicks for all matters related to human resources and to Mr. Horton for all other matters. The final authority for decisions affecting employee status at all facilities rests with Vice-President Hicks.

Hicks developed the personnel policies and procedures for all facilities. There is a single employee handbook and a common written drug policy, both applicable to the employees working at each of the facilities. No manager or supervisor has any authority to deviate from the policies and procedures specified in the employee handbook. Hicks must specifically approve any exceptions. Hicks also oversees unemployment claims and attends unemployment hearings as required. Hicks also has sole authority to decide whether employees receive loans under Horton Industries policies and procedures.

Brandi Stapp is responsible for payroll at all facilities. She maintains time records for all employees. Stapp also administers the garnishments and child-support payments for all employees. All employee workers' compensation and insurance questions are directed to Kathy

Ingram.<sup>8</sup>

Semi-annual profit sharing meetings are conducted through human resources. Separate meetings are held at each facility only because of the number of employees involved. The script and message at each meeting is identical.

While facility supervisors and managers have authority to administer verbal and written warnings, any appeal of their decisions must go through human resources, which has the authority to approve the suspension or discharge of an employee at any of the facilities.

Geographical Location of Facilities:

Horton Industries and its three manufacturing entities all operate on a central campus in Eatonton, Georgia. The employees of Horton Homes work in two separate buildings located about three-tenths of a mile apart. The two Iron Works facilities are located about two-tenths of a mile from Horton Homes. The Horton Vans building is located about three-tenths of a mile from Horton Homes and about four-tenths of a mile from Horton Iron Works. Thus, all five buildings are situated on a common campus with no more than one half mile separating any of them.

Similar Pay Structures and Fringe Benefits:

The pay structure at each of the facilities is virtually identical. The jobs at each of the facilities have a minimum hourly base rate, which is established by N.D. Horton, Jr. In addition to the hourly base rate, employees at all facilities are eligible for a weekly production bonus. While the production bonus at the facilities is calculated in a different manner due to the different types of production, the disqualifying factors for the production bonus are identical for employees at each of the facilities. Employees are not eligible for a weekly production bonus if they are absent or tardy during the workweek. In addition to the weekly production bonus,

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<sup>8</sup> Ingram and Stapp are apparently office clerical employees working in the human resources office.

production employees at all of the facilities are eligible to receive a semi-annual profit sharing bonus. All employees receive the same percentage bonus regardless of the profitability of any one individual facility. For example, in June 2003, all production employees received a five percent bonus, notwithstanding a decrease in orders at Horton Homes and an increase in orders at Horton Van. The profit-sharing bonus for all employees is based on the profitability of Horton Industries.

Employees working at all five facilities share common fringe benefits. Medical and dental coverage is identical. The medical and dental insurance claims of all employees are processed through the same third-party administrator. The group life insurance program and retirement plan for all employees is identical. The holidays and vacation time for employees at all facilities are identical. When the Employer decides to shut down for vacation, all facilities are shut down. Finally, there is no separate facility seniority. All employees have but one service date – the day they began working for any of the facilities on the Horton Industries campus. Moreover, when an employee transfers from one facility to another, the employee maintains the seniority accumulated while working at any of the other facilities.

Based on the foregoing and weighing all of the factors considered by the Board, I find that the appropriate bargaining unit must include the production and maintenance employees at all of the Employer's subsidiaries, rather than a unit limited to only those employees of Horton Homes, Inc. In reaching this conclusion, I note that the Employer's subsidiaries are highly integrated: the entire operation is run out of the Horton Industries, Inc. holding company, based on centralized management and personnel functions under the control of its chief executive, N.D. Horton, Jr. Further, the wages and benefits of all unit employees are centrally determined and are virtually identical. Moreover, the functions of each classification of unit employees are

interchangeable and based on similar skills, enabling the Employer to transfer employees from location to location on an as-needed basis.

I am also persuaded that the common management/supervision of employees and apparent lack of meaningful local supervisory autonomy supports the Employer's contention that a multi-location unit consisting of all the Employer's facilities constitutes the appropriate bargaining unit. The record establishes that President N. D. Horton Jr. and upper management exercise control over labor relations, with final authority over hires, layoffs, wages, benefits and other terms of employment, such as permanent assignments at other facilities. See R&D Trucking; and Novato Disposal, cited supra. Although the plant managers are responsible for the daily operation of their respective subsidiary, this appears to be routine day-to-day authority over "shop needs," and thus lack the substantial authority necessary to establish the appropriateness of separate bargaining units. See Dayton Transport Corp., cited supra. In short, the record in this case simply does not establish that plant managers have any duties or responsibilities beyond routine supervision of daily operation of the plants. Tungsten, supra.

Another factor militating against the two location/Horton Homes, Inc. unit is the evidence of permanent transfers and interchange among unit employees at all five locations. I also note the unrefuted testimony that mechanics are rotated among all five facilities.

Accordingly, I find that the Employer presented sufficient evidence to rebut the Petitioner's contention that the two-location unit of Horton Homes, Inc. is appropriate. In view of the functional integration, high degree of centralized control of labor relations, lack of local supervisory autonomy, common terms and conditions of employment and significant permanent transfer among employees, I find that any purported separate identity of the two-facility Horton

Homes unit sought by the Petitioner has been negated by the record evidence. I shall, therefore, direct an election in the broader five-facility unit urged by the Employer.

## **II. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's campus located in Eatonton, Georgia.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All production and maintenance employees employed by Horton Industries, Inc. and its subsidiaries, Horton Homes, Inc., Horton Vans Inc. and Horton Ironworks, LLC., located in Eatonton, Georgia, including plant clerical employees, but excluding office clerical employees, professional employees, guards and supervisors as defined by the Act.

### **III. DIRECTION OF ELECTION<sup>9</sup>**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steelworkers of America, AFL-CIO, CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military Services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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<sup>9</sup> Inasmuch as the Petitioner has indicated it is willing to proceed to an election in the broader unit found appropriate herein, this Direction of Election is conditioned upon the Petitioner providing an adequate showing of interest in the enlarged unit by September 17, 2003

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before September 10, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **IV. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EDT) on September 17, 2003. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 3<sup>rd</sup> day of September 2003.

/s/ Claude T. Harrell

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